

Remarks:

Applicants have read and considered the Office Action dated January 5, 2010 and the references cited therein. Claims 1, 5 and 15 have been amended. Claims 1, 2, 4-6 and 11-15 are currently pending. Reconsideration is hereby requested.

In the Action, claims 1, 2, 4-6, 11 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Litherland et al. in view of Feldman. Feldman is directed to a piezoelectric audio transducer and is not related to the field of nebulizers and is not analogous or related art. Moreover, the piezoelectric transducer of Feldman does not coaxially surround the aperture 71 of the housing 70 as a piezoelectric transducer 30 in Feldman does not have any type of hole. Litherland fails to teach or suggest the actuator coaxially surrounding the aperture of the substrate, as now recited in claim 1. Therefore, neither Litherland nor Feldman can teach or suggest an actuator arranged on the substrate and coaxially surrounding the aperture of the substrate. The design of the present invention provides a more compact and simple design while maintaining superior performance. In addition, Feldman does not teach that the piezoelectric transducer is arranged on the substrate where the aperture is located. In Feldman, the piezoelectric transducer 30 is clamped between the cylinder housing in the upper part and a corresponding cylinder on the board, as clearly shown in Figure 3.

With the piezoelectric element arranged on the substrate where the aperture is formed, the arrangement of the present application provides for generating vibrations that are necessary for nebulizing fluid that is placed on one side of a membrane. Such an arrangement is essential for superior performance in an aerosol generator. The strips 76 of Feldman do not influence the vibrations of the piezoelectric element and are only a portion of the housing in Feldman. The strips are only used to retain the coaxial cylinder of the upper part of the housing to stabilize this part for clamping of the transducer in the housing. Applicants assert that claim 1 patentably distinguishes over the combination of Litherland et al. and Feldman. Applicants

therefore request that the rejection under 35 U.S.C. § 103(a) over Litherland et al. and Feldman be withdrawn.

Claims 12-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Litherland et al., in view of Feldman and further in view of Berglund et al. The Action states that Berglund teaches a fluid dispersion device having a substrate with outer and inner sections and an actuator with a substrate adapted to carry an electrical signal via a conductor and flange. The Action states that it would have been obvious to one of ordinary skill in the art to modify Litherland and Feldman as taught by Berglund to have a device that is adapted to carry an electrical signal. In addition with regard to claim 12, the Action states that it would have been an obvious matter of design choice to provide the device of Litherland and Feldman with a resilient member that is adapted to carry an electrical signal. Applicants respectfully traverse the rejection. As discussed above, the resilient members in Feldman do not influence vibration of the piezoelectric elements and are merely part of the housing. Therefore, such elements would not be obvious to one of ordinary skill in the art to modify the resilient strips in Feldman, which is not related to the field of nebulizers in view of Berglund. Moreover, as discussed above, the strips of Feldman have a substantially different function and since the system of Feldman is not related to the pertinent field, Applicants assert that Feldman is not material prior art. Moreover, there is no motivation to combine Feldman, relating to a completely different technology field, with Litherland and/or Berglund et al. Even if combined, the structural elements would not arrive at the device now recited in claims 12-14. Applicants therefore assert that claims 12-14 patentably distinguish over the prior art and request that the rejection over Litherland, Feldman and Berglund et al. be withdrawn.

A speedy and favorable action in the form of a Notice of Allowance is hereby solicited. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicants' representative at (612) 336-4728.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.



Respectfully submitted,

MERCHANT & GOULD P.C.

Dated: _____

6/7/10

By: _____

A handwritten signature in black ink, appearing to read "Gregory A. Sebold", written over a horizontal line.

Gregory A. Sebold
Reg. No. 33,280
GAS/krn